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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 CENTER FOR BIOLOGICAL DIVERSITY,
et al.,

14 Plaintiffs,

15 v.

16
17 MICHAEL S. REGAN, in his official capacity
as the Administrator of the United States
18 Environmental Protection Agency,

19 Defendant

Case No. 3:22-cv-03309-RS

**EPA'S ANSWER TO PLAINTIFFS'
FIRST AMENDED COMPLAINT**

1 Defendant Michael S. Regan, in his official capacity as the Administrator of the United
2 States Environmental Protection Agency (hereinafter “EPA”), responds to the numbered
3 allegations of the First Amended Complaint (Dkt. No. 23) (“Complaint”) filed by Plaintiffs
4 Center for Biological Diversity and Center for Environmental Health (collectively, “Plaintiffs”)
5 as follows:

6 INTRODUCTION

7 1. The allegations set forth in Paragraph 1 constitute Plaintiffs’ characterization of
8 this action, to which no response is required.

9 2. The allegations set forth in the first sentence of Paragraph 2 characterize a
10 summary of Table 1-1 in EPA, *Integrated Science Assessment for Ozone and Related*
11 *Photochemical Oxidants*, 1-5 (2013), EPA/600/R-10/076F, in American Lung Association,
12 *Ozone*, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone> (last updated
13 Apr. 20, 2020), which speak for themselves and are the best evidence of their contents. To the
14 extent that a response is required, EPA denies the allegations set forth in the first sentence of
15 Paragraph 2 to the extent that they are inconsistent with or otherwise not contained in the plain
16 language of Table 1-1 in the *Integrated Science Assessment for Ozone and Related*
17 *Photochemical Oxidants* at 1-5 and American Lung Association, *Ozone*. The allegations set
18 forth in the second sentence of Paragraph 2 characterize parts of notices of final rulemaking
19 published at 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013) and 73 Fed. Reg. 16436, 16440 (Mar. 27,
20 2008) which speak for themselves and are the best evidence of their contents. To the extent that
21 a response is required, EPA denies the allegations set forth in the second sentence of
22 Paragraph 2 to the extent that they are inconsistent with or otherwise not contained in the plain
23 language of 78 Fed. Reg. at 3088 and 73 Fed. Reg. at 16440.

24 3. The allegations set forth in the first sentence of Paragraph 3 characterize EPA,
25 *Ecosystem Effects of Ozone Pollution*, [https://www.epa.gov/ground-level-ozone-](https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution)
26 *pollution/ecosystem-effects-ozone-pollution* (last updated Mar. 8, 2022), which speaks for itself
27 and is the best evidence of its contents. To the extent that a response is required, EPA denies the
28 allegations set forth in the first sentence of Paragraph 3 to the extent that they are inconsistent

1 with or otherwise not contained in the plain language of *Ecosystem Effects of Ozone Pollution*.
2 The allegations set forth in the second sentence of Paragraph 3 characterize *Ecosystem Effects of*
3 *Ozone Pollution* and *Integrated Science Assessment for Ozone and Related Photochemical*
4 *Oxidants* at 8-42, which speak for themselves and are the best evidence of their contents. To the
5 extent that a response is required, EPA denies the allegations set forth in the second sentence of
6 Paragraph 3 to the extent that they are inconsistent with or otherwise not contained in the plain
7 language of *Ecosystem Effects of Ozone Pollution* and *Integrated Science Assessment for Ozone*
8 *and Related Photochemical Oxidants* at 8-42. The allegations set forth in the third sentence of
9 Paragraph 3 characterize 73 Fed. Reg. at 16486, which speaks for itself and is the best evidence
10 of its contents. To the extent that a response is required, EPA denies the allegations set forth in
11 the third sentence of Paragraph 3 to the extent that they are inconsistent with or otherwise not
12 contained in the plain language of 73 Fed. Reg. at 16486.

13 4. The allegations set forth in Paragraph 4 characterize 73 Fed. Reg. at 16486 and
14 University California Davis, *Biological Carbon Sequestration*,
15 <https://climatechange.ucdavis.edu/science/carbon-sequestration/biological/> (last updated Nov. 5,
16 2021), which speak for themselves and are the best evidence of their contents. To the extent that
17 a response is required, EPA denies the allegations set forth in Paragraph 4 to the extent that they
18 are inconsistent with or otherwise not contained in the plain language of 73 Fed. Reg. at 16486
19 and *Biological Carbon Sequestration*.

20 5. The allegations set forth in Paragraph 5 constitute Plaintiffs' characterization of
21 this action, to which no response is required. To the extent a response is required, EPA denies
22 the allegations.

23 JURISDICTION

24 6. The allegations set forth in the first sentence of Paragraph 6 constitute Plaintiffs'
25 characterization of this action, to which no response is required. To the extent a response is
26 required, EPA denies the allegations set forth in the first sentence of Paragraph 6. The
27 allegations set forth in the second sentence of Paragraph 6 constitute conclusions of law, to
28 which no response is required.

7. The allegations set forth in the first sentence of Paragraph 7 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA denies the allegations set forth in the first sentence of Paragraph 7. The allegations set forth in the second sentence of Paragraph 7 constitute Plaintiffs' characterization of this action, to which no response is required. To the extent a response is required, EPA denies the allegations set forth in the second sentence of Paragraph 7.

8. The allegations set forth in Paragraph 8 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA denies the allegations.

NOTICE

9. Regarding the allegations set forth in Paragraph 9, EPA admits that Plaintiffs provided EPA with written notice of intent to sue with regard to the allegations presented in the Complaint (Dkt. No. 23) on or about February 10, 2021.

10. Regarding the allegations set forth in Paragraph 10, EPA admits that Plaintiffs provided EPA with written notice of intent to sue with regard to the allegations presented in the Amended Complaint (Dkt. No. 23) on or about July 5, 2022.

11. EPA admits that more than 60 days have passed since EPA received each of the notice letters described in Paragraphs 9 and 10. The allegations set forth in the second and third sentences of Paragraph 11 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA denies the allegations set forth in the second and third sentences of Paragraph 11.

VENUE

12. The allegations set forth in the first sentence of Paragraph 12 constitute conclusions of law, to which no response is required. To the extent a response is required, Defendant admits that EPA Region IX's principal office is located in San Francisco, California, *see* 40 C.F.R. § 1.7(b)(9), but denies all remaining allegations. The allegations set forth in the second sentence of Paragraph 12 constitute Plaintiffs' characterization of this action, to which no response is required. To the extent a response is required, EPA denies the allegations set forth in the second sentence of Paragraph 12. With respect to the allegations set forth in the

1 third sentence of Paragraph 12, Defendant admits that EPA Region IX's principal office is
2 located in San Francisco, California, *see* 40 C.F.R. § 1.7(b)(9), and that California is one of the
3 states served by the Region IX office. EPA denies the allegations set forth in the fourth sentence
4 of Paragraph 12. The allegations set forth in the fifth sentence of Paragraph 12 constitute of
5 conclusions of law, to which no response is required. To the extent a response is required, EPA
6 denies the allegations. EPA lacks knowledge or information sufficient to form a belief about the
7 truth of the allegations set forth in the sixth sentence of Paragraph 12 and therefore denies the
8 allegations. The allegations set forth in the seventh sentence of Paragraph 12 constitute of
9 conclusions of law, to which no response is required. To the extent a response is required, EPA
10 denies the allegation set forth in the sixth sentence of Paragraph 12.

11 INTRADISTRICT ASSIGNMENT

12 13. The allegations set forth in Paragraph 13 constitute of conclusions of law, to
13 which no response is required. To the extent a response is required, EPA denies the allegations.

14 PARTIES

15 14. EPA lacks knowledge or information sufficient to form a belief about the truth of
16 the allegations set forth in Paragraph 14 and therefore denies the allegations.

17 15. EPA lacks knowledge or information sufficient to form a belief about the truth of
18 the allegations set forth in Paragraph 15 and therefore denies the allegations.

19 16. EPA lacks knowledge or information sufficient to form a belief about the truth of
20 the allegations set forth in Paragraph 16 and therefore denies the allegations.

21 17. EPA lacks knowledge or information sufficient to form a belief about the truth of
22 the allegations set forth in Paragraph 17 and therefore denies the allegations.

23 18. EPA lacks knowledge or information sufficient to form a belief about the truth of
24 the allegations set forth in Paragraph 18 and therefore denies the allegations.

25 19. EPA lacks knowledge or information sufficient to form a belief about the truth of
26 the allegations set forth in Paragraph 19 and therefore denies the allegations.

27 20. EPA lacks knowledge or information sufficient to form a belief about the truth of
28 the allegations set forth in Paragraph 20 and therefore denies the allegations.

1 21. EPA lacks knowledge or information sufficient to form a belief about the truth of
2 the allegations set forth in Paragraph 21 and therefore denies the allegations.

3 22. EPA lacks knowledge or information sufficient to form a belief about the truth of
4 the allegations set forth in Paragraph 22 and therefore denies the allegations.

5 23. EPA lacks knowledge or information sufficient to form a belief about the truth of
6 the allegations set forth in Paragraph 23 and therefore denies the allegations.

7 24. EPA lacks knowledge or information sufficient to form a belief about the truth of
8 the allegations set forth in Paragraph 24 and therefore denies the allegations.

9 25. EPA lacks knowledge or information sufficient to form a belief about the truth
10 of the allegations set forth in Paragraph 25 and therefore denies the allegations.

11 26. The allegations set forth in the first sentence of Paragraph 26 constitute
12 Plaintiffs' characterization of the action to which no response is required. To the extent a
13 response is required, EPA admits that Michael S. Regan is the Administrator of EPA, but denies
14 the remaining allegations. The allegations set forth in the second sentence of Paragraph 26
15 constitute Plaintiffs' characterization of the EPA Administrator's duties under the Clean Air
16 Act, which speaks for itself and is the best evidence of its contents. To the extent a response is
17 required, EPA denies the allegations set forth in the second sentence of Paragraph 26 to the
18 extent that they are inconsistent with or otherwise not contained in the plain language of the
19 Clean Air Act.

20 27. EPA lacks knowledge or information sufficient to form a belief about the truth of
21 the allegations set forth in Paragraph 27 and therefore denies the allegations.

22 STATUTORY FRAMEWORK

23 28. The allegations set forth in Paragraph 28 characterize H.R. Rep. No. 1146, 91st
24 Cong., 2d Sess. 1, 1970 U.S. Code Cong. & Admin. News 5356, 5356, which speaks for itself
25 and is the best evidence of its contents. To the extent that a response is required, EPA denies the
26 allegations set forth in Paragraph 28 to the extent that they are inconsistent with or otherwise
27 not contained in the plain language of 1970 U.S. Code Cong. & Admin. News at 5356.

1 29. The allegations set forth in Paragraph 29 characterize 42 U.S.C. § 7408(a)(1)(A),
2 which speaks for itself and is the best evidence of its contents. To the extent that a response is
3 required, EPA denies the allegations set forth in Paragraph 29 to the extent that they are
4 inconsistent with or otherwise not contained in the plain language of 42 U.S.C. § 7408(a)(1)(A).

5 30. The allegations set forth in Paragraph 30 characterize
6 42 U.S.C. §§ 7409(a)(1)(A) and 7409(b)(1)-(2), which speak for themselves and are the best
7 evidence of their contents. To the extent that a response is required, EPA denies the allegations
8 set forth in Paragraph 30 to the extent that they are inconsistent with or otherwise not contained
9 in the plain language of 42 U.S.C. §§ 7409(a)(1)(A) and 7409(b)(1)-(2).

10 31. The allegations set forth in Paragraph 31 characterize 42 U.S.C. § 7407(d)(1)(A),
11 which speaks for itself and is the best evidence of its contents. To the extent that a response is
12 required, EPA denies the allegations set forth in Paragraph 31 to the extent that they are
13 inconsistent with or otherwise not contained in the plain language of 42 U.S.C. § 7407(d)(1)(A).

14 32. The allegations set forth in Paragraph 32 characterize 42 U.S.C. § 7410(a)(1),
15 which speaks for itself and is the best evidence of its contents. To the extent that a response is
16 required, EPA denies the allegations set forth in Paragraph 32 to the extent that they are
17 inconsistent with or otherwise not contained in the plain language of 42 U.S.C. § 7410(a)(1).

18 33. The allegations set forth in Paragraph 33 characterize 42 U.S.C. § 7410(k)(1)(B),
19 which speaks for itself and is the best evidence of its contents. To the extent that a response is
20 required, EPA denies the allegations set forth in Paragraph 33 to the extent that they are
21 inconsistent with or otherwise not contained in the plain language of 42 U.S.C. § 7410(k)(1)(B).

22 34. The allegations set forth in Paragraph 34 characterize 42 U.S.C. §§ 7410(k)(2)-
23 (3), which speak for themselves and are the best evidence of their contents. To the extent that a
24 response is required, EPA denies the allegations set forth in Paragraph 34 to the extent that they
25 are inconsistent with or otherwise not contained in the plain language of
26 42 U.S.C. §§ 7410(k)(2)-(3).

27 35. The allegations set forth in Paragraph 35 characterize 42 U.S.C. § 7410(c), which
28 speaks for itself and is the best evidence of its contents. To the extent that a response is

1 required, EPA denies the allegations set forth in Paragraph 35 to the extent that they are
 2 inconsistent with or otherwise not contained in the plain language of 42 U.S.C. § 7410(c).

3 FACTUAL BACKGROUND

4 A. EPA Violated the Clean Air Act by Failing to Take Final Action for the 2008 Ozone
 5 NAAQS Nonattainment SIP Submittal for Nonattainment Areas

6 **North Dakota**

7 36. The allegations set forth in the first sentence of Paragraph 36 characterize 86
 8 Fed. Reg. 41413, 41414 (Aug 2, 2021), which speaks for itself and is the best evidence of its
 9 contents. To the extent that a response is required, EPA denies the allegations set forth in the
 10 first sentence of Paragraph 36 to the extent that they are inconsistent with or otherwise not
 11 contained in the plain language of 86 Fed. Reg. at 41414. The allegations set forth in the second
 12 and fifth sentences of Paragraph 36 characterize 42 U.S.C. § 7410(k)(1)(B) and 42 U.S.C.
 13 § 7410(k)(2)-(4), which speak for themselves and are the best evidence of their contents. To the
 14 extent that a response is required, EPA denies the allegations set forth in the second and fifth
 15 sentences of Paragraph 36 to the extent that they are inconsistent with or otherwise not
 16 contained in the plain language of 42 U.S.C. § 7410(k)(1)(B) and 42 U.S.C. § 7410(k)(2)-(4).
 17 The allegations set forth in the third sentence of Paragraph 36 constitute of conclusions of law,
 18 to which no response is required. To the extent a response is required, EPA admits that it has
 19 failed to take final action on a state implementation plan (“SIP”) submission from North Dakota
 20 on or about August 3, 2020 containing amendments to North Dakota Administrative Code,
 21 Article 33.1-15 (Air Pollution Control), chapters numbered from 33.1-15-01 through 33.1-15-
 22 21, but denies the remaining allegations as stated in the third sentence of Paragraph 36. With
 23 respect to the allegations set forth in the fourth sentence of Paragraph 36, EPA admits that it has
 24 failed to take final action on a SIP submission from North Dakota on or about August 3, 2020
 25 containing amendments to North Dakota Administrative Code, Article 33.1-15 (Air Pollution
 26 Control), chapters numbered from 33.1-15-01 through 33.1-15-21, but denies the remaining
 27 allegations as stated in the fourth sentence of Paragraph 36.

Ventura County, California

37. The allegations set forth in Paragraph 37 characterize 87 Fed. Reg. 24060, 24060-24061 (Apr. 22, 2022) and 85 Fed. Reg. 11814, 11814 (Feb. 27, 2020), which speak for themselves and are the best evidence of their contents. To the extent that a response is required, EPA denies the allegations set forth in Paragraph 37 to the extent that they are inconsistent with or otherwise not contained in the plain language of 87 Fed. Reg. at 24060–24061 and 85 Fed. Reg. at 11814.

38. The allegations set forth in the first sentence of Paragraph 38 characterize a notice of final rulemaking published at 84 Fed. Reg. 70109, 70112 (Dec. 20, 2019), which speaks for itself and is the best evidence of its contents. To the extent that a response is required, EPA denies the allegations set forth in the first sentence of Paragraph 38 to the extent that they are inconsistent with or otherwise not contained in the plain language of 84 Fed. Reg. at 70112. The allegations set forth in the second and third sentences of Paragraph 38 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA admits that the submittal became complete by operation of law on or about October 11, 2017 and that EPA has not taken final action on SIP submittals identified in 84 Fed. Reg. at 70109 addressing the contingency measures elements for Ventura County, California, for the 2008 ozone NAAQS, but denies the remaining allegations set forth in the second and third sentences of Paragraph 38. With respect to the allegations set forth in the fourth sentence of Paragraph 38, EPA admits that it has not taken final action on SIP submittals identified in 84 Fed. Reg. at 70109 addressing the contingency measures elements for Ventura County, California, for the 2008 ozone NAAQS, but denies the remaining allegations as stated in the fourth sentence of Paragraph 38. The allegations set forth in the fifth sentence of Paragraph 38 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA admits that it has not taken final action on SIP submittals identified in 84 Fed. Reg. at 70109 addressing the contingency measures elements for Ventura County, California, for the 2008 ozone NAAQS, but denies the remaining allegations as stated in the fifth sentence of Paragraph 38.

39. The allegations set forth in the first sentence of Paragraph 39 characterize 84 Fed. Reg. at 70112, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, EPA denies the allegations set forth in the first sentence of Paragraph 39 to the extent that they are inconsistent with or otherwise not contained in the plain language of 84 Fed. Reg. at 70112. The allegations set forth in the second and third sentences of Paragraph 39 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA admits that SIP submittals identified in 84 Fed. Reg. at 70109 addressing the contingency measures elements for Ventura County, California, for the 2008 ozone NAAQS were deemed complete on or about June 5, 2019 by operation of law and that it has not taken final action on SIP submittals identified in 84 Fed. Reg. at 70109 addressing the contingency measures elements for Ventura County, California, for the 2008 ozone NAAQS, but denies the remaining allegations as stated in the fifth sentence of Paragraph 39. With respect to the allegations set forth in the fourth sentence of Paragraph 39, EPA admits that it has not taken final action on SIP submittals identified in 84 Fed. Reg. at 70109 addressing the contingency measures elements for Ventura County, California, for the 2008 ozone NAAQS, but denies the remaining allegations as stated in the fourth sentence of Paragraph 39. The allegations set forth in the fifth sentence of Paragraph 39 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA admits that it has not taken final action on SIP submittals identified in 84 Fed. Reg. at 70109 addressing the contingency measures elements for Ventura County, California, for the 2008 ozone NAAQS, but denies the remaining allegations as stated in the fifth sentence of Paragraph 39.

Colorado—New Source Review (“NSR”) and Air Pollution Emission Notices

40. The allegations set forth in the first and second sentences of Paragraph 40 characterize 87 Fed. Reg. 16439, 16439 (Mar. 23, 2022), which speaks for itself and is the best evidence of its contents. To the extent that a response is required, EPA denies the allegations set forth in the first and second sentences of Paragraph 40 to the extent that they are inconsistent with or otherwise not contained in the plain language of 87 Fed. Reg. at 16439. The allegations in the third, fourth, and sixth sentences of Paragraph 40 constitute conclusions of law, to which

no response is required. To the extent a response is required, EPA admits that the SIP submittals identified in 87 Fed. Reg. 16439 were deemed complete by operation of law on or about November 13, 2020 and that EPA has not taken final action on the SIP submittals identified in 87 Fed. Reg. 16439, but denies the remaining allegations set forth in the third, fourth, and sixth sentences of Paragraph 40. With respect to the allegations set forth in the fifth sentence of Paragraph 40, EPA admits that it has not taken final action on the SIP submittals identified in 87 Fed. Reg. 16439.

Colorado—Section 182(c) Requirements

41. EPA admits the allegations set forth in the first two sentences of Paragraph 41. The third sentence of Paragraph 41 characterizes a letter from Carl Daly, Acting Director Air and Radiation Division, EPA Region 8 to Garry Kaufman, Division Director, Air Pollution Control Division Colorado Dep't of Pub. Health and Env't (Jun. 2, 2021) ("Completeness Determination"), which speaks for itself and is the best evidence of its contents. To the extent that a response is required, EPA denies the allegations set forth in the first and second sentences of Paragraph 41 to the extent that they are inconsistent with or otherwise not contained in the plain language of the Completeness Determination.

42. The allegations set forth in the first and third sentences of Paragraph 42 constitute conclusions of law, to which no response is required. To the extent a response is required, EPA admits that it has not taken final action on the SIP submittals identified in 87 Fed. Reg. 16439, but denies the remaining allegations set forth in the first and second sentences of Paragraph 42. With respect to the allegations set forth in the second sentence of Paragraph 42, EPA admits that it has not taken final action on the SIP submittals identified in 87 Fed. Reg. 16439.

Pennsylvania—Montour, LLC

43. The allegations set forth in Paragraph 43 characterize 86 Fed. Reg. 48908, 48908-48909 (Sept. 1, 2021), which speaks for itself and is the best evidence of its contents. To the extent that a response is required, EPA denies the allegations set forth in Paragraph 43 to the extent that they are inconsistent with or otherwise not contained in the plain language of 86 Fed. Reg. at 48908-48909.

1 44. The allegations set forth in the first and second sentences of Paragraph 44
 2 constitute conclusions of law, to which no response is required. To the extent a response is
 3 required, EPA admits that the SIP submittal identified in 86 Fed. Reg. 48908 was deemed
 4 complete by operation of law on or about September 9, 2020, but denies the remaining
 5 allegations as set forth in the first and second sentences of Paragraph 44. EPA admits that it has
 6 not taken final action on the SIP submittal identified in 86 Fed. Reg. 48908. The allegations set
 7 forth in the fourth sentence of Paragraph 44 constitute conclusions of law, to which no response
 8 is required. The extent a response is required, EPA denies the allegation set forth in the fourth
 9 sentence of Paragraph 44.

10 B. EPA Violated the Clean Air Act by Failing to Promulgate a FIP for 2008
 11 Ozone NAAQS Nonattainment Areas in California and New Hampshire

12 45. The allegations set forth in Paragraph 45 characterize *Final Rule*, 82 Fed. Reg.
 13 9158, 9158 (Feb. 3, 2017), which speaks for itself and is the best evidence of its contents. To
 14 the extent that a response is required, EPA denies the allegations set forth in Paragraph 45 to the
 15 extent that they are inconsistent with or otherwise not contained in the plain language of 82 Fed.
 16 Reg. at 9158.

17 46. The allegations set forth in the first and second sentences of Paragraph 46
 18 characterize 82 Fed. Reg. at 9158, which speaks for itself and is the best evidence of its
 19 contents. To the extent that a response is required, EPA denies the allegations set forth in the
 20 first and second sentences of Paragraph 46 to the extent that they are inconsistent with or
 21 otherwise not contained in the plain language of 82 Fed. Reg. at 9158. With respect to the
 22 allegations set forth in the third sentence of Paragraph 46, EPA admits that it has not
 23 promulgated a Federal implementation plan (“FIP”) addressing the nonattainment elements
 24 identified in 82 Fed. Reg. 9158 for the following nonattainment areas and districts, and state
 25 within the ozone transport region (“OTR”), for the 2008 ozone NAAQS: Los Angeles-San
 26 Bernardino Counties (West Mojave Desert), California nonattainment area (Mojave Desert Air
 27 Quality Management District), *see* 82 Fed. Reg. at 9161; Sacramento Metro, California
 28 nonattainment area (Sacramento Metropolitan Air Quality Management District), *see id.*; and

1 Sacramento Metro, California nonattainment area (Yolo-Solano Air Quality Management
2 District), *see id.*; or New Hampshire because the entire state is in the OTR), *see id.*, but denies
3 the remaining allegations set forth in the third sentence of Paragraph 46. The allegations set
4 forth in the fourth sentence of Paragraph 46 constitute conclusions of law, to which no response
5 is required. To the extent a response is required, EPA admits that it has not promulgated a FIP
6 addressing the nonattainment elements identified in 82 Fed. Reg. 9158 for the following
7 nonattainment areas and districts, and state within the OTR, for the 2008 ozone NAAQS: Los
8 Angeles-San Bernardino Counties (West Mojave Desert), California nonattainment area
9 (Mojave Desert Air Quality Management District), *see* 82 Fed. Reg. at 9161; Sacramento
10 Metro, California nonattainment area (Sacramento Metropolitan Air Quality Management
11 District), *see id.*; and Sacramento Metro, California nonattainment area (Yolo-Solano Air
12 Quality Management District), *see id.*; or New Hampshire because the entire state is in the
13 OTR), *see id.*, but denies the remaining allegations set forth in the fourth sentence of Paragraph
14 46.

15 47. The allegations set forth in the first and second sentences of Paragraph 47
16 characterize notices of final rulemaking published at 85 Fed. Reg. 21777, 21777 (Apr. 20,
17 2020), which speaks for itself and is the best evidence of its contents. To the extent that a
18 response is required, EPA denies the allegations set forth in the first and second sentences of
19 Paragraph 47 to the extent that they are inconsistent with or otherwise not contained in the plain
20 language of 85 Fed. Reg. at 21777. The allegations set forth in the third sentence of Paragraph
21 47 characterize 42 U.S.C. § 7410(c)(1)(A), which speaks for itself and is the best evidence of its
22 contents. To the extent that a response is required, EPA denies the allegations set forth in the
23 third sentence of Paragraph 47 to the extent that they are inconsistent with or otherwise not
24 contained in the plain language of 42 U.S.C. § 7410(c)(1)(A).

25 48. The allegations set forth in the first and second sentences of Paragraph 48
26 characterize 85 Fed. Reg. at 21777, which speaks for itself and is the best evidence of its
27 contents. To the extent that a response is required, EPA denies the allegations set forth in the
28 first and second sentences of Paragraph 48 to the extent that they are inconsistent with or

1 otherwise not contained in the plain language of 85 Fed. Reg. at 21777. With respect to the
2 allegations set forth in the third sentence of Paragraph 48, EPA admits that it has admits that it
3 has been more than two years since EPA published the notice of final rulemaking at 85 Fed.
4 Reg. 21777 and that EPA has not promulgated a FIP addressing minor source NSR
5 requirements for Placer County, California. The allegations set forth in the fourth sentence of
6 Paragraph 48 constitute conclusions of law, to which no response is required. To the extent a
7 response is required, EPA admits that it has admits that it has been more than two years since
8 EPA published the notice of final rulemaking at 85 Fed. Reg. 21777 and that EPA has not
9 promulgated a FIP addressing minor source NSR requirements for Placer County, California
10 and denies the remaining allegations set forth in the fourth sentence of Paragraph 48.

11 49. The allegations set forth in Paragraph 49 and the fourth column of Table 1
12 constitute conclusions of law, to which no response is required. To the extent a response is
13 required, EPA admits that it has not issued a FIP or FIPs or taken final action approving SIP
14 submittals addressing the SIP elements or implementing reasonably available control
15 technology (“RACT”) for the categories of sources or control techniques guideline (“CTG”) documents for the 2008 ozone NAAQS for the nonattainment areas and/or districts, or state in
16 the OTR in EPA Table A below, but denies the remaining allegations set forth in the first
17 sentence of Paragraph 49. With respect to the allegations set forth in the second and third
18 columns of Table 1, EPA admits that it has not issued a FIP or FIPs or taken final action
19 approving SIP submittals addressing the following SIP elements or implementing RACT for the
20 following categories of sources or CTG documents for the 2008 ozone NAAQS for the
21 following nonattainment areas or state in the OTR, but denies the remaining allegation set forth
22 in the second and third columns of Table 1:
23
24
25
26
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EPA Table A

A. Los Angeles—San Bernardino Counties (West Mojave Desert), California nonattainment area (codified at 40 C.F.R. § 81.305)

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
i.	Nonattainment new source review pursuant to 42 U.S.C. §§ 7511a(a)(2)(C) and 7511a(d) (“Severe NNSR”)

EPA Table B

B. Sacramento Metro (Sacramento), California nonattainment area (codified at 40 C.F.R. § 81.305)

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
i.	RACT Non-CTG VOC for Major Sources pursuant to 42 U.S.C. § 7511a(b)(2)(C) (“RACT Non-CTG VOC for Major Sources”)
ii.	RACT NOx for Major Sources pursuant to 42 U.S.C. § 7511a(f) (“RACT NOx for Major Sources”)
iii.	Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations, EPA-453/R-97-004 (Dec. 1997) pursuant to 42 U.S.C. § 7511a(b)(2) (“Aerospace”)
iv.	Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings, EPA 453/R-08-006 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2) (“Automobile & Light Duty Truck Assembly Coatings”)
v.	Control of Volatile Organic Emissions from Bulk Gasoline Plants, EPA-450/2-77-035 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Bulk Gasoline Plant CTG”)
vi.	Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants, EPA-450/3-83-007 (Dec. 1983) pursuant to 42 U.S.C. § 7511a(b)(2) (“Equipment Leaks from Natural Gas/Gasoline Processing Plants”)
vii.	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VII: Factory Surface Coating of Flat Wood Paneling, EPA-450/2-78-032 (June 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Factory Surface Coating of Flat Wood Paneling”)
viii.	Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials, EPA 453/R-08-004 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2) (“Fiberglass Boat Manufacturing Materials”)
ix.	Control Techniques Guidelines for Flat Wood Paneling Coatings, EPA-453/R-06-004 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2) (“Flat Wood Paneling Coatings”)
x.	Control Techniques Guidelines for Flexible Package Printing, EPA-453/R-06-003 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2) (“Flexible Package Printing”)

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
xi.	Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment, EPA-450/3-83-006 (Mar. 1984) pursuant to 42 U.S.C. § 7511a(b)(2) (“Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment”)
xii.	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VIII: Graphic Arts-Rotogravure and Flexography, EPA-450/2-78-033 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Graphic Arts-Rotogravure and Flexography”)
xiii.	Control Techniques Guidelines for Industrial Cleaning Solvents, EPA-453/R-06-001 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2) (“Industrial Cleaning Solvents”)
xiv.	Control Techniques Guidelines for Large Appliance Coatings, EPA-453/R-07-004 (Sept. 2007) pursuant to 42 U.S.C. § 7511a(b)(2) (“Large Appliance Coatings”)
xv.	Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners, EPA-450/3-82-009 (Sept. 1982) pursuant to 42 U.S.C. § 7511a(b)(2) (“Large Petroleum Dry Cleaners”)
xvi.	Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA-450/2-78-051 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Leaks from Gasoline Tank Trucks and Vapor Collection Systems”)
xvii.	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, EPA-450/2-78-036 (June 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Leaks from Petroleum Refinery Equipment”)
xviii.	Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing, EPA-453/R-06-002 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2) (“Offset Lithographic Printing and Letterpress Printing”)
xix.	Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins, EPA-450/3-83-008 (Nov. 1983) pursuant to 42 U.S.C. § 7511a(b)(2) (“Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins”)
xx.	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires, EPA-450/2-78-030 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Manufacture of Pneumatic Rubber Tires”)
xxi.	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products, EPA-450/2-78-029 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Manufacture of Synthesized Pharmaceutical Products”)
xxii.	Control Techniques Guidelines for Metal Furniture Coatings, EPA 453/R-07-005 (Sept. 2007) pursuant to 42 U.S.C. § 7511a(b)(2) (“Metal Furniture Coatings”)
xxiii.	Control Techniques Guidelines for Miscellaneous Industrial Adhesives, EPA 453/R-08-005 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2) (“Miscellaneous Industrial Adhesives”)

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
xxiv.	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, EPA 453/R-08-003 (Sept. 2008) ¹ pursuant to 42 U.S.C. § 7511a(b)(2) (“Miscellaneous Metal and Plastic Parts Coatings”)
xxv.	Control Techniques Guidelines for Paper, Film, and Foil Coatings, EPA 453/R-07-003 (Sept. 2007) pursuant to 42 U.S.C. § 7511a(b)(2) (“Paper, Film, and Foil Coatings”)
xxvi.	Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks, EPA-450/2-78-047 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Petroleum Liquid Storage in External Floating Roof Tanks”)
xxvii.	Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds, EPA-450/2-77-025 (Oct. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds”)
xxviii.	Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (“SOCMI”), EPA-450/3-84-015 (Dec. 1984) pursuant to 42 U.S.C. § 7511a(b)(2) (“Air Oxidation Processes in SOCMI”)
xxix.	Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in SOCMI, EPA-450/4-91-031 (Aug. 1993) pursuant to 42 U.S.C. § 7511a(b)(2) (“Reactor Processes and Distillation Operations in SOCMI”)
xxx.	Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating), 61 Fed. Reg-44,050 (Aug. 27, 1996) pursuant to 42 U.S.C. § 7511a(b)(2); <i>see also</i> EPA-453/R-94-032 (“Shipbuilding and Ship Repair Operations (Surface Coating)”)
xxxi.	Control of Volatile Organic Emissions from Solvent Metal Cleaning, EPA-450/2-77-022 (Nov. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Solvent Metal Cleaning”)
xxxii.	Design Criteria for Stage I Vapor Control Systems – Gasoline Service Stations, EPA-450/R-75-102 (Nov. 1975) ² pursuant to 42 U.S.C. § 7511a(b)(2) (“Stage I Vapor Control Systems – Gasoline Service Stations”)
xxxiii.	Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks, EPA-450/2-77-036 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Storage of Petroleum Liquids in Fixed-Roof Tanks”)
xxxiv.	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume

¹ The First Amended Complaint refers to two separate CTGs, “RACT VOC CTG Miscellaneous Metal Products Coatings (2008),” and “RACT VOC CTG Plastic Parts Coatings (2008).” First Amended Complaint, tbl. 1. These requirements are contained in a single CTG document.

² This document is regarded as a CTG although it was never published with an EPA document number.

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
	IV: Surface Coating for Insulation of Magnet Wire, EPA-450/2-77-033 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Existing Stationary Sources – Volume IV: Surface Coating for Insulation of Magnet Wire”)
xxxv.	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA-450/2-77-008 (May 1977) ³ pursuant to 42 U.S.C. § 7511a(b)(2) (“Existing Stationary Sources – Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks”)
xxxvi.	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume V: Surface Coating of Large Appliances, EPA-450/2-77-034 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Existing Stationary Sources – Volume V: Surface Coating of Large Appliances”)
xxxvii.	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume III: Surface Coating of Metal Furniture, EPA-450/2-77-032 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Existing Stationary Sources – Volume III: Surface Coating of Metal Furniture”)
xxxviii.	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VI: Surface Coating of Miscellaneous Metal Parts and Products, EPA-450/2-78-015 (June 1978) pursuant to 42 U.S.C. § 7511a(b)(2) (“Existing Stationary Sources – Volume VI: Surface Coating of Miscellaneous Metal Parts and Products”)
xxxix.	Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA-450/2-77-026 (Oct. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Tank Truck Gasoline Loading Terminals”)
xl.	Control of Volatile Organic Emissions from Use of Cutback Asphalt, EPA-450/2-77-037 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2) (“Cutback Asphalt”)
xli.	Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations, EPA-453/R-96-007 (Apr. 1996) pursuant to 42 U.S.C. § 7511a(b)(2) (“Wood Furniture Manufacturing Operations”)

EPA Table C

C. Sacramento Metro (Yolo-Solano), California nonattainment area (codified at 40 C.F.R. § 81.305)

Ite m	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
i.	RACT Non-CTG VOC for Major Sources

³ See n.1.

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
ii.	RACT NOx for Major Sources
iii.	Bulk Gasoline Plants
iv.	Fiberglass Boat Manufacturing Materials
v.	Industrial Cleaning Solvents
vi.	Leaks from Gasoline Tank Trucks and Vapor Collection Systems
vii.	Petroleum Liquid Storage in External Floating Roof Tanks
viii.	Solvent Metal Cleaning
ix.	Stage I Vapor Control Systems – Gasoline Service Stations
x.	Miscellaneous Metal and Plastic Parts Coatings
xi.	Existing Stationary Sources – Volume IV: Surface Coating for Insulation of Magnet Wire
xii.	Existing Stationary Sources – Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks
xiii.	Existing Stationary Sources – Volume V: Surface Coating of Large Appliances
xiv.	Existing Stationary Sources – Volume VI: Surface Coating of Miscellaneous Metal Parts and Products
xv.	Tank Truck Gasoline Loading Terminals
xvi.	Cutback Asphalt

EPA Table D

D. New Hampshire portion of the OTR:

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
i.	RACT Non-CTG VOC for Major Sources
ii.	RACT NOx for Major Sources
iii.	Aerospace Manufacturing and Rework Operations
iv.	Automobile and Light-Duty Truck Assembly Coatings

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
v.	Bulk Gasoline Plants
vi.	Equipment Leaks from Natural Gas/Gasoline Processing Plants
vii.	Existing Stationary Sources – Volume VII: Factory Surface Coating of Flat Wood Paneling
viii.	Fiberglass Boat Manufacturing Materials
ix.	Flat Wood Paneling Coatings
x.	Flexible Package Printing
xi.	Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment
xii.	Existing Stationary Sources – Volume VIII: Graphic Arts-Rotogravure and Flexography
xiii.	Industrial Cleaning Solvents
xiv.	Large Appliance Coatings
xv.	Large Petroleum Dry Cleaners
xvi.	Leaks from Gasoline Tank Trucks and Vapor Collection Systems
xvii.	Leaks from Petroleum Refinery Equipment
xviii.	Offset Lithographic Printing and Letterpress Printing
xix.	Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins
xx.	Manufacture of Pneumatic Rubber Tires
xxi.	Manufacture of Synthesized Pharmaceutical Products
xxii.	Metal Furniture Coatings
xxiii.	Miscellaneous Industrial Adhesives
xxiv.	Miscellaneous Metal and Plastic Parts Coatings
xxv.	Paper, Film, and Foil Coatings
xxvi.	Petroleum Liquid Storage in External Floating Roof Tanks

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
xxvii.	Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds
xxviii.	Air Oxidation Processes in SOCMI
xxix.	Reactor Processes and Distillation Operations in SOCMI
xxx.	Shipbuilding and Ship Repair Operations (Surface Coating)
xxxi.	Solvent Metal Cleaning
xxxii.	Stage I Vapor Control Systems – Gasoline Service Stations
xxxiii.	Storage of Petroleum Liquids in Fixed-Roof Tanks
xxxiv.	Existing Stationary Sources – Volume IV: Surface Coating for Insulation of Magnet Wire
xxxv.	Existing Stationary Sources – Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks
xxxvi.	Existing Stationary Sources – Volume V: Surface Coating of Large Appliances
xxxvii.	Existing Stationary Sources – Volume III: Surface Coating of Metal Furniture
xxxviii.	Existing Stationary Sources – Volume VI: Surface Coating of Miscellaneous Metal Parts and Products
xxxix.	Tank Truck Gasoline Loading Terminals
xl.	Cutback Asphalt
xli.	Wood Furniture Manufacturing Operations

EPA Table E

E. Placer County Air Pollution Control District

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline
i.	NSR permitting program for new and modified sources of air pollution pursuant to section 110(a)(2)(C) of the Clean Air Act

1 50. The allegations set forth in the first sentence of Paragraph 50 characterize a
 2 notice of final rulemaking published at 87 Fed. Reg. 33697, 33697 (June 3, 2022) which speaks
 3 for itself and is the best evidence of its contents. To the extent that a response is required, EPA
 4 denies the allegations set forth in the first sentence of Paragraph 50 to the extent that they are
 5 inconsistent with or otherwise not contained in the plain language of 84 Fed. Reg. at 70112. The
 6 allegations set forth in the second and third sentences of Paragraph 50 constitute conclusions of
 7 law, to which no response is required. To the extent a response is required, EPA admits that the
 8 2020 RACT demonstration identified in 87 Fed. Reg. 33697 was deemed complete by operation
 9 of law on or about June 29, 2021 and that EPA has not taken final action on the 2020 RACT
 10 demonstration submittal for San Diego, except for the three negative declarations listed at 87
 11 Fed. Reg. at 38666 and one negative declaration listed at 87 FR at 33697, but denies the
 12 remaining allegations set forth in the second and third sentences of Paragraph 50. With respect
 13 to the allegations set forth in the fourth sentence of Paragraph 50, EPA admits that it has not
 14 taken final action on the 2020 RACT demonstration submittal for San Diego, except for the
 15 three negative declarations listed at 87 Fed. Reg. at 38666 and one negative declaration listed at
 16 87 FR at 33697.

17 51. The allegations set forth in the fifth sentence of Paragraph 51 constitute
 18 conclusions of law, to which no response is required. To the extent a response is required, EPA
 19 admits that it has not taken final action on the 2020 RACT demonstration submittal for San
 20 Diego, except for the four negative declarations listed at 87 Fed. Reg. at 38666, but denies the
 21 remaining allegation set forth in Paragraph 51.

22 CLAIM FOR RELIEF

23 FIRST CLAIM

24 (Failure to take final action for the 2008 ozone NAAQS nonattainment SIP submittals for
 25 nonattainment areas in North Dakota; Ventura County, California; Colorado; and Pennsylvania)

26 52. EPA restates its responses to Paragraphs 1-51 above.

27 53. The allegations set forth in Paragraph 35 characterize 82 Fed. Reg. at 9158,
 28 which speaks for itself and is the best evidence of its contents. To the extent that a response is

1 required, EPA denies the allegations set forth in Paragraph 35 to the extent that they are
2 inconsistent with or otherwise not contained in the plain language of 82 Fed. Reg. at 9158 and
3 EPA admits that it has been more than two years since the effective date of the final rule, 82
4 Fed. Reg. 9158.

5 54. With respect to the allegations in the first sentence of Paragraph 54, EPA admits
6 it has been more than twelve months since the submittals identified in 84 Fed. Reg. at 70109
7 and 84 Fed. Reg. at 70112 were deemed administratively complete. With respect to the second
8 sentence of Paragraph 54, the EPA admits that EPA has not taken final action on the
9 contingency measures elements of these submittals, but denies the remaining allegations set
10 forth in the second sentence of Paragraph 54. The allegations set forth in the third sentence of
11 Paragraph 54 constitute a conclusion of law, to which no response is required. To the extent a
12 response is required, EPA admits that EPA has not taken final action on the contingency
13 measures elements of these submittals, but denies the remaining allegations set forth in the third
14 sentence of Paragraph 54.

15 55. To the extent the allegations set forth in the first sentence of Paragraph 55
16 constitute a conclusion of law, no response is required. To the extent a response is required,
17 EPA admits that it has been more than twelve months since November 13, 2020. With respect to
18 the second sentence of Paragraph 55, EPA admits that it has not yet taken final action on the
19 SIP submittals identified in 87 Fed. Reg. 16439. The allegation in the third sentence of
20 Paragraph 55 constitutes a conclusion of law, to which no response is required. To the extent a
21 response is required, EPA admits that it has not yet taken final action on the SIP submittals
22 identified in 87 Fed. Reg. 16439, but denies the remaining allegations set forth in Paragraph 55.

23 56. To the extent the allegations set forth in the first sentence of Paragraph 56
24 constitute a conclusion of law, no response is required. To the extent a response is required,
25 EPA admits that it has been more than twelve months since June 2, 2021. With respect to the
26 second sentence of Paragraph 56, EPA admits that it has not yet taken final action on the State
27 of Colorado's March 22, 2021 SIP submittal addressing Clean Air Act section 182(c)
28 requirements for the Denver Metro/North Front Range Serious nonattainment area under the

2008 ozone NAAQS and subject to the Completeness Determination. The allegation in the third sentence of Paragraph 56 constitutes a conclusion of law, to which no response is required. To the extent a response is required EPA admits that it has not yet taken final action on the State of Colorado's March 22, 2021 SIP submittal addressing Clean Air Act section 182(c) requirements for the Denver Metro/North Front Range Serious nonattainment area under the 2008 ozone NAAQS and subject to the Completeness Determination.

57. With respect to the allegations set forth in the first sentence of Paragraph 57, EPA admits it has been more than twelve months since Pennsylvania submitted the Montour, LLC facility RACT SIP revisions identified in *Final Rule*, 86 Fed. Reg. at 48908-48909. As to the allegations set forth in the second sentence of Paragraph 57, EPA admits that it has not taken final action on the Montour, LLC facility RACT SIP revisions identified in *Final Rule*, 86 Fed. Reg. at 48908-48909. The allegations set forth in the third sentence of Paragraph 54 constitute a conclusion of law, to which no response is required. To the extent a response is required, EPA denies the allegation set forth in the third sentence of Paragraph 57.

SECOND CLAIM

(Failure to promulgate a FIP to address requirements for the 2008 ozone NAAQS that apply to nonattainment and other areas in California and to New Hampshire)

58. EPA restates its responses to Paragraphs 1-57 above.

59. The allegations set forth in the first sentence of Paragraph 59 characterize 82 Fed. Reg. at 9158, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, EPA denies the allegations set forth in the first sentence of Paragraph 59 to the extent that they are inconsistent with or otherwise not contained in the plain language of 82 Fed. Reg. at 9158. The allegations set forth in the second sentence of Paragraph 59 characterize 82 Fed. Reg. at 9158, which speaks for itself and is the best evidence of its contents. To the extent that a response is required, EPA denies the allegations set forth in the first sentence of Paragraph 59 to the extent that they are inconsistent with or otherwise not contained in the plain language of 82 Fed. Reg. at 9158, but admits that it has been more than two years since EPA found that the States' failure to submit certain SIP elements related to the

1 2008 ozone NAAQS establish certain deadlines for EPA to promulgate a FIP to address any
2 outstanding SIP requirements. With respect to the allegations set forth in the third sentence of
3 Paragraph 59, EPA admits that is has been more than two years since EPA issued a final
4 limited approval and limited disapproval of California's submittal addressing minor source
5 NSR requirements for Placer County, California.

6 60. With respect to the allegations in the first sentence of Paragraph 60, EPA admits
7 it has not promulgated a FIP to address the SIP elements for the 2008 ozone NAAQS for the
8 areas listed in EPA Tables A-E, but denies the remaining allegations as set forth in
9 Paragraph 60. With respect to the second sentence in Paragraph 60, EPA denies that New
10 Hampshire has not corrected the deficiencies of failure to submit the SIP elements in Table 1,
11 but admits that California has not submitted SIP submittals addressing the SIP elements in
12 Table 1 and that EPA has not approved the SIP elements submitted to correct the deficiencies of
13 failure to submit the SIP elements listed in Table 1. The allegations set forth in the third
14 sentence of Paragraph 60 constitutes a conclusion of law, to which no response is required. To
15 the extent a response is required, EPA admit that it has not promulgated FIPs addressing the SIP
16 elements for the areas identified in EPA Tables A-E, but denies the remaining allegations set
17 forth in the Paragraph 60.

18 THIRD CLAIM

19 (Failure to take final action for the 2020 RACT demonstration for the 2008 ozone
20 NAAQS in San Diego County, California)

21 61. EPA restates its responses to Paragraphs 1-60 above.

22 62. With respect to the allegations in the first sentence of Paragraph 62, EPA admits
23 it has been more than two years months since California submitted the 2020 RACT
24 demonstration for the 2008 ozone NAAQS for San Diego County. The allegations set forth in
25 the second sentence of Paragraph 62 constitute a conclusion of law, to which no response is
26 required. To the extent a response is required, EPA admits that it has not taken final action on
27 the 2020 RACT demonstration submittal for San Diego, except for the three negative
28

1 declarations listed at 87 Fed. Reg. at 38666 and one negative declaration listed at 87 Fed. Reg.
2 at 33697.

3 REQUEST FOR RELIEF

4 1. The allegations set forth in Paragraph 1 constitute Plaintiffs' request for relief,
5 which does not require a response.

6 2. The allegations set forth in Paragraph 2 constitute Plaintiffs' request for relief,
7 which does not require a response.

8 3. The allegations set forth in Paragraph 3 constitute Plaintiffs' request for relief,
9 which does not require a response.

10 4. The allegations set forth in Paragraph 4 constitute Plaintiffs' request for relief,
11 which does not require a response.

12 5. The allegations set forth in Paragraph 5 constitute Plaintiffs' request for relief,
13 which does not require a response.

14 GENERAL DENIAL

15 EPA denies each and every allegation of the First Amended Complaint not specifically
16 admitted in its responses to the First Amended Complaint's specific Paragraphs, set forth above.
17 To the extent that any allegations of fact in the First Amended Complaint remain unanswered,
18 EPA denies such allegations.

19 AFFIRMATIVE DEFENSES

20 The court lacks subject matter jurisdiction over some of Plaintiffs' claims or fails to state
21 a claim upon which relief can be granted.

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6 Respectfully submitted,

7 Date: September 30, 2022

8 TODD KIM
9 Assistant Attorney General

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